48A C.J.S. Judges § 292

Corpus Juris Secundum | August 2023 Update

Judges
Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

2. Interest and Relationship

b. Relationship

§ 292. To party or person interested

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Judges 45

Generally, it is sufficient to disqualify a judge that the judge is related to a party or to a person pecuniarily or directly interested in the result of the case.

Although, under some statutes, a judge may be disqualified if the judge is related to any person interested in the cause,[1] it is generally required that the disqualifying relationship be to a "party" to the cause.[2]

Some cases refuse to give a broad construction to the word "party" as used in statutes defining the disqualification,[3] and confine their application to actual parties,[4] and do not include everyone who has a pecuniary interest in the result of the suit.[5] However, the word "party" is more commonly construed in a broad sense[6] and given a liberal scope.[7] Accordingly, it has been held that the

disqualification on account of kinship is not confined to parties of record[8] but includes all persons represented by such parties,[9] and any one interested,[10] or pecuniarily interested,[11] in the result, or, at least in the case of a criminal proceeding, directly interested.[12]

Generally, in order to disqualify the judge, a related person must have a direct or pecuniary interest in the subject matter or result of the case.[13] A mere indirect or uncertain interest is insufficient.[14] A judge is not disqualified by relationship to one having no personal interest in the subject matter of the proceedings,[15] to one who owns an interest in the property which is the subject of the suit but whose interest is not involved,[16] or to one whose interest is but general and remote, and such as pertains to the general public.[17] Thus, recusal is not required merely because a relative was or is involved in other litigation concerning the same general subject matter that is before the court.[18] Judges need not recuse themselves for being "parties" to a class action if the class has not yet been certified.[19]

A probate judge is disqualified where the judge appoints a relative as administrator[20] or where the judge is the spouse of a legatee under a will propounded for probate.[21]

Nominal party; representative capacity.

While a judge may not be disqualified by relationship within the prohibited degree to a nominal party,[22] generally it is immaterial whether the litigant is suing in his or her own right or in a representative capacity.[23] It has been held, however, that a guardian ad litem is not a "party" within the provisions of the statutes[24] although a guardian petitioning the court for authority to invest the ward's fund is "a party," which fact operates to disqualify the judge of the court by reason of their relation.[25]

Stockholders or officers of corporations.

It has been held that the fact of a judge's relationship to a stockholder in a corporation which is a party to an action before the judge will not form a ground of objection.[26] However, the contrary has also been held,[27] at least under statutes so providing.[28] It has also been held that a judge's relationship to an officer of the corporation which is a party will not disqualify the judge[29] although under or apart from statute it has been held that a judge who is related to an officer of a corporation which is a party is disqualified.[30]

CUMULATIVE SUPPLEMENT

Cases:

Fact that trial judge had represented defendant in a criminal proceeding 17 years ago did not require judge to recuse himself; defendant did not show that trial judge had access to confidential information or even recalled representing defendant, that trial judge used confidential, personal information in presiding over defendant's trial or in sentencing him, or that trial judge was biased or prejudiced against defendant in any way. State v. Fuentes, 302 Neb. 919, 926 N.W.2d 63 (2019).

[END OF SUPPLEMENT]

Footnotes

1 Ark.—Byler v. State, 210 Ark. 790, 197 S.W.2d 748 (1946).

Tex.—Fry v. Tucker, 146 Tex. 18, 202 S.W.2d 218 (1947).

2 Miss.—Dodd v. Kelley, 107 Miss. 471, 65 So. 561 (1914).

Tex.—McKnight v. State, 432 S.W.2d 69 (Tex. Crim. App. 1968).

3 Conn.—Casmento v. Barlow Bros. Co., 83 Conn. 180, 76 A. 361 (1910).

4 U.S.—In re Fox West Coast Theatres, 25 F. Supp. 250 (S.D. Cal. 1936), order aff'd, 88 F.2d 212 (C.C.A. 9th Cir. 1937).

Tex.—Niles v. Dean, 363 S.W.2d 317 (Tex. Civ. App. Beaumont 1962).

5 Conn.—Casmento v. Barlow Bros. Co., 83 Conn. 180, 76 A. 361 (1910).

6 Ga.—Georgia Power Co. v. Watts, 184 Ga. 135, 190 S.E. 654, 110 A.L.R. 465 (1937).

Or.—State v. Nagel, 185 Or. 486, 202 P.2d 640 (1949).

7 Ark.—Copeland v. Huff, 222 Ark. 420, 261 S.W.2d 2 (1953).

8 Ala.—Ex parte Clanahan, 261 Ala. 87, 72 So. 2d 833, 50 A.L.R.2d 134 (1954).

Ky.—Barnes v. Cooper, 507 S.W.2d 157 (Ky. 1974).

9 Ind.—State ex rel. Parker v. Vosloh, 222 Ind. 518, 54 N.E.2d 650 (1944).

10 Ga.—Gray v. Barlow, 241 Ga. 347, 245 S.E.2d 299 (1978).

11 Ga.—Georgia Power Co. v. Watts, 184 Ga. 135, 190 S.E. 654, 110 A.L.R. 465 (1937).

Ind.—State ex rel. Parker v. Vosloh, 222 Ind. 518, 54 N.E.2d 650 (1944).

12 La.—State v. Livaudais, 161 La. 882, 109 So. 536 (1926).

13 Cal.—Vilardo v. Sacramento County, 54 Cal. App. 2d 413, 129 P.2d 165 (3d Dist. 1942).

Ky.—Hill v. Kesselring, 310 Ky. 483, 220 S.W.2d 858, 10 A.L.R.2d 1301 (1949).

14 Ga.—De Loach v. State, 78 Ga. App. 482, 51 S.E.2d 539 (1949).

Tex.—Hidalgo County Water Control and Imp. Dist. No. 1 v. Boysen, 354 S.W.2d 420 (Tex. Civ. App. San Antonio 1962), writ refused, (May 23, 1962).

15 Ga.—York v. State, 42 Ga. App. 453, 156 S.E. 733 (1931).

Ky.—Hill v. Kesselring, 310 Ky. 483, 220 S.W.2d 858, 10 A.L.R.2d 1301 (1949).

Tex.—Walker v. State, 160 Tex. Crim. 383, 271 S.W.2d 286 (1954).

16 Colo.—Patrick v. Crowe, 15 Colo. 543, 25 P. 985 (1891).

Ga.—Burch v. State, 18 Ga. App. 290, 89 S.E. 341 (1916).

17 Ala.—McConnell v. Goodwin, 189 Ala. 390, 66 So. 675 (1914).

Tex.—International & G.N. Ry. Co. v. Anderson County, 174 S.W. 305 (Tex. Civ. App. Texarkana 1915), writ refused, (Apr. 5, 1916) and aff'd, 246 U.S. 424, 38 S. Ct. 370, 62 L. Ed. 807 (1918).

18 U.S.—Perry v. Schwarzenegger, 630 F.3d 909 (9th Cir. 2011).

19 U.S.—Tramonte v. Chrysler Corp., 136 F.3d 1025, 163 A.L.R. Fed. 791 (5th Cir. 1998).

20 Ala.—Plowman v. Henderson, 59 Ala. 559, 1877 WL 1283 (1877).

Mass.—Hall v. Thayer, 105 Mass. 219, 1870 WL 6948 (1870).

21 N.H.—Perkins v. George, 45 N.H. 453, 1864 WL 3230 (1864).

22 Ark.—Fowler v. Byers, 16 Ark. 196, 1855 WL 587 (1855).

23 N.Y.—People ex rel. Union Bag & Paper Corp. v. Gilbert, 143 Misc. 287, 256 N.Y.S. 442 (Sup 1932), aff'd, 236 A.D. 873, 260 N.Y.S. 939 (3d Dep't 1932).

24 Minn.—Bryant v. Livermore, 20 Minn. 313, 20 Gil. 271, 1874 WL 3707 (1874).

N.Y.—In re Van Wagonen's Will, 23 N.Y.S. 636 (Gen. Term 1893).

25 Okla.—Hengst v. Burnett, 1913 OK 589, 40 Okla. 42, 135 P. 1062 (1913).

26 Cal.—Central Sav. Bank of Oakland v. Lake, 201 Cal. 438, 257 P. 521 (1927).

Tex.—Texas Farm Bureau Cotton Ass'n v. Williams, 117 Tex. 218, 300 S.W. 44 (Comm'n App. 1927).

27 Ga.—Georgia Power Co. v. Moody, 186 Ga. 343, 197 S.E. 844, 117 A.L.R. 798 (1938).

28 W. Va.—Highland v. Empire Nat. Bank of Clarksburg, 114 W. Va. 473, 172 S.E. 544 (1933).

29 U.S.—In re Fox West Coast Theatres, 25 F. Supp. 250 (S.D. Cal. 1936), order aff'd, 88 F.2d 212 (C.C.A. 9th Cir. 1937).

30 Cal.—Vilardo v. Sacramento County, 54 Cal. App. 2d 413, 129 P.2d 165 (3d Dist. 1942).

Ohio—Cuyahoga County Bd. of Mental Retardation v. Association of Cuyahoga County Teachers of Trainable Retarded, 47 Ohio App. 2d 28, 1 Ohio Op. 3d 168, 351 N.E.2d 777 (8th Dist. Cuyahoga County 1975).

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